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I, PURITA T. EUGENIO, hereby certify that this document is being deposited with the United States Postal Service as Express Mail, postage prepaid, in an envelope addressed to BOX TTAB, NO FEE, ASSISTANT COMMISSIONER FOR TRADEMARKS, 2900 CRYSTAL DRIVE, ARLINGTON, VA 22202-3513
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05-31-2002
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #71

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

MARK D. TANNEN,

Opposer,

vs.

JAY MACK,

Applicant.

Opposition No.: 91151109
Serial No.: 75/845,350

APPLICANT'S REPLY AND OBJECTION TO OPPOSER'S MEMORANDUM IN OPPOSITION TO APPLICANT'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT AND DECLARATION IN SUPPORT OF OPPOSER'S MEMORANDUM IN OPPOSITION TO APPLICANT'S MOTION FOR SUMMARY JUDGMENT

Applicant, Jay Mack, replies and objects to Opposer's Memorandum in Opposition to Applicant's Motion to Dismiss for Lack of Subject Matter Jurisdiction or in the alternative for Summary Judgment (hereinafter "MSJ Opposition") and objects to the Declaration of Mark D. Tannen in Support of Opposer's Memorandum in Opposition to Applicant's Motion for Summary Judgment (hereinafter "Tannen Declaration") filed by Opposer, Mark D.

Tannen, against application for registration of Applicant's trademark INTELLIWEAR, Serial No. 75/845,350, filed on December1, 1999 and published in the *Official Gazette* on October 30, 2001.

INTRODUCTION STATEMENT

Opposer Mark D. Tannen has filed opposition papers to Applicant's Motion to Dismiss and Motion for Summary Judgment based wholly on Opposer's Declaration which is void. Opposer's Declaration asserts a variety of matters not based on personal knowledge as required by FRCP 56(e), lacks the required attestations as required under 37 C.F.R. 2.20 and 28 U.S.C. §1746, and contains Exhibits which have not been sworn or certified as required by FRCP 56(e). Further, the opposition to Applicant's motion alleges facts not alleged in Opposer's original opposition to Applicant's registration.

In addition, Opposer and Opposer's counsel were both put on notice, by receipt of Applicant's Motion to Dismiss and Motion for Summary Judgment (hereinafter "MSJ"), that Opposer did not have the corporate authority to sign as president of the American Intelliware Corporation on June 30, 1995 on the assignment document submitted to the USPTO assigning marks to himself by virtue of a certified copy of American Intelliware Corporation's suspension by the California Secretary of State on June 1, 1994 submitted with the MSJ. With full knowledge of the lack of corporate power and authority to make this purported transfer, Opposer and Opposer's counsel re-submitted this document as an

Exhibit to the "Declaration of Mark D. Tannen in Support of Opposer's Memorandum in Opposition to Applicant's Motion for Summary Judgment."

Prior use of a trademark does not automatically entitle the first user or registrant to bar its use by others. Even if a mark is registered, the presumption of an exclusive right to use it extends only so far as the goods or services noted in the registration certificate. Opposer's alleged registration is *only for* "Computer software programs and user manuals sold as a unit" in class 009, and not for the broad range of products and services claimed by the Opposer. Even if Opposer's mark was held to be valid, Opposer cannot successfully prevent registration of Applicant's mark because of its narrow scope.

Finally, assuming arguendo that the March 2, 1990 Corporate minutes of American Intelliware Corporation recording the proffered assignment of the Mark AI American Intelliware and Design to the Opposer were admissible in this proceeding and were verified, they show only that an *assignment in gross* was made to Opposer, and thus being assigned apart from the goodwill associated with the Mark(s), the Mark(s) referred to in this document were destroyed.

ARGUMENTS

OPPOSER CANNOT CLAIM RIGHTS IN THE MARKS AMERICAN INTELLIWEAR AND AI AMERICAN INTELLIWEAR AND DESIGN

Opposer, in his MSJ Opposition claims rights in his Preliminary Statement in the marks AMERICAN INTELLIWEAR, and AI AMERICAN INTELLIWEAR and Design based on

rights granted to him by a predecessor in interest and ownership of the United States Trademark Registration No. 1,347,429. This is a false statement. United States Trademark Registration No. 1,347,429 is for the mark AI AMERICAN INTELLI***WARE*** and Design. (Emphasis added) Opposer has presented no facts nor evidence that he holds *any* rights to any mark using the letters "WEAR" in any mark.

OPPOSER CLAIMED DOING BUSINESS AS AMERICAN INTELLIWARE

Opposer claims that he is an individual doing business as American Intelliware and having a business address at P. O. Box 199, New York, New York 10044-204. American Intelliware is a sole proprietorship. However, Opposer did not include in his opposition response to Applicant's MSJ any evidence to support his statements in his Declaration #1 and in the Notice of Opposition, which he again cited in paragraph I.1 of the Statement of Facts.

OPPOSER BRINGING FOR THE FIRST TIME
A CLAIM OF COMMON LAW TRADEMARK RIGHTS

Opposer, *brings up for the first time,* a claim of common law trademark rights in the Mark AI AMERICAN INTELLIWARE and Design. (*See* MSJ Opposition #1, 9-26, Argument VI. A. 1-3; Tannen Declaration #1-6, 10-27) However, "[a] party may not defend against a motion for summary judgment by asserting the existence of genuine issues of material fact as to an unpleaded claim or defense." TBMP § 528.07(b), *See Blansett Pharmaceutical Co. v. Carmrick Laboratories Inc.*, 25 USPQ2d 1473 (TTAB 1992), and *Perma Ceram Enterprises, Inc. v. Preco Industries Ltd.*, 23 USPQ2d 1134 (TTAB 1992). Opposer has not pleaded any rights to

any mark by virtue of possession of any common law trademark rights. In his Opposition, he claims rights to the mark AI AMERICAN INTELLIWARE and Design and AMERICAN INTELLIWARE based on rights acquired through a predecessor in interest, namely, the now defunct California Corporation "American Intelliware Corporation." Because the Opposer did not claim any common law trademark rights in his Opposition, any and all claims of "common law rights" in any marks must be struck from the record in his MSJ Opposition and may not be considered by the Board in deciding Applicant's pending motions.

EXHIBIT 4 TO OPPOSER'S DECLARATION IS VOID AND POSSIBLY FRAUDULENT

Opposer was put on notice by virtue of Applicant's Answer and MSJ served on April 26, 2002, that the American Intelliware Corporation was suspended as of June 1, 1994, remained suspended as of December 19, 2001, and that this suspension had not been lifted or removed. (Applicant's Answer # 5, MSJ # 1-2, Exhibit "A") With full notice of these facts, which are undisputed by the Opposer, he submitted for the second time, a record of assignment of the mark AI AMERICAN INTELLIWARE and Design signed by Mark D. Tannen as *President* of *American Intelliware Corporation* on June 30, 1995. Opposer was clearly put on notice by the Applicant that American Intelliware Corporation had **no corporate status** and as such, Mark D. Tannen had no corporate authority to sign any documents on behalf of that defunct corporation. As such, the assignment signed on June 30, 1995 was void, and submission of this document to the Board with knowledge of its void status may

have been fraudulent. Alleging a prior assignment by the California Corporation before their corporate status was suspended does nothing to remove the apparent fraud of the Opposer signing a document *as President* of a Corporation that *at the time of signature* had its corporate powers suspended.

OPPOSER'S ENTIRE DECLARATION IS NOT BASED ON PERSONAL KNOWLEDGE AS REQUIRED BY FRCP 56(e) AND IS THEREFORE NOT ADMISSIBLE

The Tannen Declaration is not based on personal knowledge as required by FRCP 56(e) and as such is not admissible. "Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matter stated therein." FRCP 56(e), *see also* TBMP § 528.05(b). The Tannen Declaration asserts claims and facts which are obviously not within the personal knowledge of the declarant, to wit: legal conclusions, predictions of the future, and in some cases are just simply too fantastic to believe. A synopsis of these statements are as follows:

1. Tannen Declaration #10 - "The foregoing assignment is valid, subsisting and in full force and effect. . ."

2. Tannen Delaration #14 - "[I]t is fair to say that I offer a full spectrum of general software and hardware system bundles, *of every conceivable make and model*" (emphasis added)

3. Tannen Declaration #15 - "The AMERICAN INTELLIWARE marks create a distinctive designation of the origin of my products and services. . ."

4. Tannen Declaration #16 - "I have acquired significant goodwill in the individual AMERICAN INTELLIWARE marks."

5. Tannen Declaration #20 - "[T]he INTELLIWARE feature of the AMERICAN INTELLIWARE marks is itself distinctive. . ."

6. Tannen Declaration #23 - "I may find myself at a computer hardware and software tradeshow at a booth next to Applicant in the future. . ."

7. Tannen Declaration #25 - "I have accumulated incalculable good will. . ."

8. Tannen Declaration #26 - "[T]he AMERICAN INTELLIWARE marks have acquired significant professional consumer recognition, possess a favorable reputation and distinctiveness with an invaluable amount of goodwill, *solely signifying my business as the source of computer and hardware systems. . .*" (emphasis added)

9. Tannen Declaration #27 - "[I]t would indeed be costly and damaging to American Intelliware if Applicant marketed and sold products under the designation INTELLIWEAR at a nearby booth at the same trade show, or if he were able to market similar products on the Internet or in the same newspaper or magazine pages under the mark INTELLIWEAR because of the likelihood of confusion that could result.)

Because none of these statements are based on personal knowledge, they are not admissible under FRCP 56(e). "Affidavits which are inadequate under Rule 56(e) must be

disregarded." *G. D. Searle & Co. v Chas. Pfizer & Co.* (1956, CA7 Ill) 231 F2d 316, 318, 109 USPQ 6.

> "Rule 56(e) states that 'supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.' Thus, statements outside the affiant's personal knowledge or statements that are the result of speculation or conjecture or merely conclusory do not meet this requirement." *Stagman v. Ryan*, 176 F.3d 986, 995, 1999 U.S. App. LEXIS 8578, 161 L.R.R.M. (BNA) 2204, 138 Lab. Cas. (CCH) P58637, 51 Fed. R. Evid. Serv. (CBC) 1549, 51 Fed. R. Evid. Serv. (CBC) 1551 (7th Cir. Ill. 1999)

Accordingly, the entire Tannen Declaration is not admissible for the above reason alone.

OPPOSER'S DECLARATION NOT PROPERLY ATTESTED AS REQUIRED BY 37 C.F.R. 2.20

The Tannen Declaration is not attested to as required by 37 CFR 2.20 because it asserts a variety of things "on information and belief," (Tannen Declaration #6, 16, 18, 21, 22, 23) which is not permitted under the Federal Rules of Civil Procedure without the required statutory language of warning. 37 CFR 2.20 provides that in lieu of an affidavit, a declaration may be used with either the language of 28 U.S.C. 1746 or the following language:

> The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

28 U.S.C. 1746 provides the following language for use within the United States: "I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). The Opposer has apparently used an attestation of his own creation, one that is not provided for in the United States Code. "Those facts alleged on 'understanding' like those based on 'belief' or on 'information and belief', are not sufficient to create a genuine issue of fact." *Cermetek, Inc. v. Butler Avpak, Inc.*, 573 F.2d 1370, 1377, 1978 U.S. App. LEXIS 11384 (9th Cir. Cal. 1978) "The authorities are entirely uniform in holding that an affidavit to be considered must conform with the rule and affidavits based on information and belief will be disregarded." *New Hampshire Fire Ins. Co. v. Perkins*, 28 F.R.D. 588, 1961 U.S. Dist. LEXIS 5321, 5 Fed. R. Serv. 2d (Callaghan) 649 (D. Del. 1961). Affidavits stating *information and belief* of affiant, containing opinions and impressions of state of mind or intent of other persons, based on hearsay, and expressing conclusions, would not be admissible at trial and could not be considered on affidavits submitted under Rule 56(e). *Hotel & Restaurant Employees' Alliance v. Allegheny Hotel Co.*, 374 F. Supp. 1259, 1974 U.S. Dist. LEXIS 8816, 86 L.R.R.M. (BNA) 2256, 74 Lab. Cas. (CCH) P10168 (W.D. Pa. 1974) As such, the entire Tannen Declaration is not admissible for this reason alone.

EXHIBITS TO OPPOSER'S DECLARATION ARE NOT ADMISSIBLE AS REQUIRED UNDER FRCP 56(e)

The Tannen Declaration's Exhibits are not admissible because they are not sworn or certified copies as required under FRCP 56(e). FRCP 56(e) provides in part: "Sworn or

certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith." In addition to not being sworn or certified, some of the exhibits appear to have been manufactured by the Opposer to supplement his declaration. See for example, Exhibit 1 to the Tannen Declaration. It consists of only a single typewritten page, purporting to delineate the total sales of American Intelliware for a five-year period without any allocation as to the marks under which its sales were made. The two magazine articles submitted under Exhibit 7 do not have dates and issue/volume numbers. Where numerous papers were referred to in each of supporting affidavits, but no sworn or certified copy of any such paper was attached to or served with either affidavit, all references to such papers should have been disregarded on motion for summary judgment. *Washington v. Maricopa County*, 143 F.2d 871, 872, 1944 U.S. App. LEXIS 3208 (9th Cir. Ariz. 1944) Therefore, in addition to all Exhibits being stricken from the record, all references in the MSJ Opposition to those Exhibits should also be disregarded by the Board upon consideration of this motion. "A substantial amount of authority indicates that the failure to attach a certified copy as required by Rule 56(e) precludes consideration of the portions of the affidavit to which an objection has been made." *Monroe v. Board of Education*, 65 F.R.D. 641, 1975 U.S. Dist. LEXIS 14201, 20 Fed. R. Serv. 2d (Callaghan) 499 (D. Conn. 1975) As such, the Tannen Declaration's Exhibits are not admissible and should not be considered by the Board by virtue of their submission as unsworn and uncertified attachments to the Tannen

Declaration. In addition, all references to those stricken Exhibits in the MSJ Opposition should also be stricken from the record and not considered by the Board.

OPPOSER'S CLAIM OF RIGHT OF PRIORITY DOES NOT EXIST

Assuming, arguendo, that the Board chooses to consider the Tannen Declaration's Exhibits, the sole document by which the Opposer claims a right of priority based on an alleged assignment of the rights to the mark "AI AMERICAN INTELLIWARE and Design" by the American Intelliware Corporation proves on its face that the mark relied on does not exist. Opposer submits as Exhibit 3 to the Tannen Declaration what purports to be minutes of the American Intelliware Corporation on March 2, 1990. Specifically, Opposer relies on Action No. (3) as presented on page 2 of this document. It states:

> (3) American Intelliware Corporation (CA) hereby officially approves the transfer of title of all American Intelliware Corporation (CA) trademarks, copyrights and intellectual properties worldwide to Mark D. Tannen, in good faith, with the explicit understanding that, if necessary, he will freely grant a license for their use to "American Intelliware" in New York as American Intelliware Corporation (CA) is restructured, expands or officially relocates to New York over the next several years.

Classic "hornbook" trademark law would describe this language as an *assignment in gross*, which destroys the trademark in question.

> A sale of a trademark divorced from its good will is characterized as an 'assignment in gross.' If one obtains a trademark through an assignment in gross, divorced from the good will of the assignor, the assignee obtains the symbol, but not the reality. Any subsequent use of the mark by the assignee may be in connection with a different business, a different good will and a different type of product. The

> continuity of the thing symbolized by the mark is broken." 2 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 18: 3 (2001)

"Trademark law holds that a mark has no independent existence apart from the goodwill of the business." *Moloney v. Centner*, 727 F. Supp. 1232, 1239, 1989 U.S. Dist. LEXIS 15817 (N.D. Ill. 1989) Because the mark was assigned without the goodwill associated with the mark, the mark was destroyed. "Use of the mark by the assignee in connection with a different goodwill and different product would result in a fraud on the purchasing public who reasonably assume that the mark signifies the same thing, whether used by one person or another." *Marshak v. Green*, 505 F. Supp. 1054, 1981 U.S. Dist. LEXIS 10466, 212 U.S.P.Q. (BNA) 493 (S.D.N.Y. 1981) In fact, based on Opposer's pleadings, and assuming that Opposer's pleadings were proven at trial, that is *exactly* what has occurred in this case. The original mark registration was granted to the American Intelliware Corporation in California for "Computer software programs and user manuals sold as a unit" in class 009. Opposer currently asserts that the mark is used in marketing and sales for:

> AMERICAN INTELLIWARE and AI AMERICAN INTELLIWARE and Design computer hardware and software systems and related goods and services including, micro-processor-powered computers, manuals and associated software, and other software and hardware used for or in connection with data entry of graphics, sound and text by mean of video, keyboard or hands free (voice), data storage, data retrieval, and data (graphics and word) processing, and used for or in connection with word processing, faxing, electronic messaging or email, and for or in connection with connecting to networks of other computers and to the Internet. Opposer also renders computer consulting services under the marks. (MSJ Opposition #12, Tannen Declaration #3)

This is precisely why assignments in gross destroy the mark. While previous customers may have known the mark AI AMERICAN INTELLIWARE AND DESIGN for their computer programs and manuals for the STORYBOARDER and SCRIPTWRITER products produced and sold by the California corporation American Intelliware Corporation, the bounds by which Opposer uses the mark appears to be almost limitless.[1] "The purpose of the rule prohibiting the sale or assignment of a trademark in gross is to prevent a consumer from being misled or confused as to the source and nature of the goods or services that he or she acquires." *Sugar Busters LLC v. Brennan*, 177 F.3d 258, 265, 1999 U.S. App. LEXIS 10221, 50 U.S.P.Q.2d (BNA) 1821 (5th Cir. La. 1999) Because consumers might have relied on the mark standing for the same products that they had become familiar with when used by the California corporation, the use of the mark by the Opposer in New York for an almost limitless amount of unrelated uses would tend to mislead the consumers that they were dealing with the same entity. "The sale or assignment of a trademark without the goodwill that the mark represents is characterized as in gross and is invalid." *Id.* In examining the record in a best case scenario for the Opposer, and admitting all evidence that was improperly submitted by Opposer, due to the mark being assigned in gross, he has no mark left to protect because the mark was destroyed upon the alleged assignment.

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[1] *See* Tannen Declaration #14 "[I]t is fair to say that I offer a full spectrum of general software and hardware system bundles, *of every conceivable make and model*" (emphasis added)

OPPOSER'S ALLEGED MARK, EVEN IF VALID CANNOT PREVENT APPLICANT'S MARK FROM BEING REGISTERED

Prior use of a trademark does not automatically entitle the first user to bar its use by others. Indeed, even if a mark is registered, the presumption of an exclusive right to use it extends only so far as the goods or services noted in the registration certificate. Opposer's alleged registration is *only for* "Computer software programs and user manuals sold as a unit" in Class 009. This registration is significantly narrower than what Opposer is now claiming, and assuming arguendo that the mark was valid would obviously not cross over with every mark that was in any way related to computer hardware or software, and would certainly not be confused with Applicant's registration for "wearable computer hardware and computer software, namely, wearable micro processor-powered computers and associated software used for hands free data entry, data storage, data retrieval and data processing, and used for electronic messaging and for connecting to the internet" which is even narrower in scope than Opposer's alleged registration. In fact, Opposer's registration *does not even mention* hardware. The Lanham Act provides that the protection afforded by registration extends to "the goods or services specified in the registration subject to any conditions or limitations stated therein." 15 U.S.C. § 1115(a). . . [G]iven this language, "even if a mark is registered, the presumptive right to use it extends only so far as the goods or services noted in the registration certificate." *Natural Footwear, Ltd. v. Hart, Schaffner & Marx,* 760 F.2d 1383, 1395-1396, 1985 U.S. App. LEXIS 30999, 225 U.S.P.Q. (BNA) 1104 (3d Cir. N.J.

1985) *Quoting Mushroom Makers, Inc. v. R.G. Barry Corp.*, 580 F.2d 44, 48 (2d Cir. 1978), cert. denied, 439 U.S. 1116, 59 L. Ed. 2d 75, 99 S. Ct. 1022, 200 U.S.P.Q. (BNA) 832 (1979); *see also Avon Shoe Co. v. David Crystal, Inc.*, 279 F.2d 607, 613 n.7 (2d Cir.), cert. denied, 364 U.S. 909, 5 L. Ed. 2d 224, 81 S. Ct. 271, 127 U.S.P.Q. (BNA) 555 (1960). In this situation, Opposer cannot prevent Applicant's mark from registration, even if the Board decided that the claimed mark was valid and in full force, because Opposer's alleged registration only extends as far as the goods noted in the certificate of registration.

CONCLUSION

In conclusion, Opposer's MSJ Opposition and the Tannen Declaration which purportedly supports it is for the most part, inadmissible under FRCP 56 because it does not comply with any of the rules regarding admissibility of evidence under the Federal Rules of Civil Procedure. Opposer is attempting by virtue of asserting a mark which he does not own, and does not exist to envelope the word of any phonetically similar variation of "Intelliware" and take it from the English language for his own personal use. There are no genuine issues of material fact which have been raised by Opposer before this Board. Even assuming, arguendo, that the Opposer's mark was valid, he would still not be able to prevail in an opposition to prevent Applicant's registration of the mark "INTELLIWEAR" for the extremely narrow scope which the Applicant requests registration for, to wit: "wearable computer hardware and computer software, namely, wearable micro processor-powered computers and associated software used for hands free data entry, data storage, data

retrieval and data processing, and used for electronic messaging and for connecting to the internet." Applicant's trademark is manifestly distinct from trademarks of the Opposer, if any exist, and Applicant requests that the Motion to Dismiss the Opposition for Lack of Subject Matter Jurisdiction be granted, or in the alternative that the Motion for Summary Judgement in favor of the Applicant be granted, and that a Notice of Allowance issue to Applicant for his mark. In addition, in light of the facts brought to light by this proceeding, the Applicant requests that the marks asserted by the Opposer be cancelled.

Respectfully submitted,

Date: May 31, 2002

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Attorneys for Applicant,
JAY MACK

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing APPLICANT'S REPLY AND OBJECTION TO OPPOSER'S MEMORANDUM IN OPPOSITION TO APPLICANT'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT AND DECLARATION IN SUPPORT OF OPPOSER'S MEMORANDUM IN OPPOSITION TO APPLICANT'S MOTION FOR SUMMARY JUDGMENT was mailed FIRST CLASS mail, postage prepaid, this 31st day of May, 2002 on Opposer's counsel:

Paul J. Reilly, Esq.
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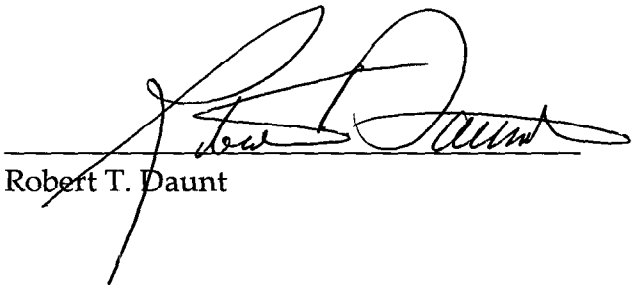

Robert T. Daunt

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TRADEMARK TRIAL AND APPEAL BOARD
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IN THE

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK TRIAL AND APPEAL BOARD

MARK D. TANNEN,

Opposer,

vs.

JAY MACK,

Applicant.

Opposition No.: 91151109
Serial No.: 75/845,350

BOX TTAB
NO FEE
ASSISTANT COMMISSIONER FOR TRADEMARKS
2900 CRYSTAL DRIVE
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Dear Sir:

TRANSMITTAL LETTER

In connection with the above-referenced trademark registration application of Jay Mack, transmitted herewith are the following:

(1) Applicant's Reply and Objection to Opposer's Memorandum in Opposition to Applicant's Motion to Dismiss for Lack of Subject Matter Jurisdiction or In the Alternative for Summary Judgment and Declaration in Support of Opposer's Memorandum in Opposition to Applicant's Motion for Summary Judgment - 17 pages; and

(2) Postcard.

Please date-stamp the enclosed postcard and return same to the undersigned in acknowledgment of receipt of all transmitted materials.

Respectfully submitted,

Robert T. Daunt

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May 31, 2002
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